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10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

12 MICHAEL FORD, NOE GAMBOA,
 13 RUDOLPH DUBROVSZKY, and MADISON
 14 COPELAND, individually and on behalf of all
 15 others similarly situated,

16 Plaintiffs,

17 v.

18 [24]7.AI, INC.,

19 Defendant.

20 Case No.: 5:18-cv-02770-BLF
 21 [Hon. Beth Labson Freeman]

22 **SUPPLEMENTAL JOINT CASE
 23 MANAGEMENT STATEMENT**

24 Plaintiffs Michael Ford, Noe Gamboa, Rudolph Dubrovszky, and Madison Copeland
 25 (collectively, “Plaintiffs”) and Defendant [24]7.ai, Inc. (“[24]7”), pursuant to the Court’s Order
 26 Directing Clerk to Reopen Case; and Setting Case Management Conference for September 10, 2020
 27 (the “Order”), hereby file this Joint Case Management Statement.

1 **I. LEGAL ISSUES**

2 On July 16, 2020, the United States Court of Appeals for the Ninth Circuit (“Ninth
 3 Circuit”) remanded this matter for a stay pending resolution of *Pica v. Delta Airlines, Inc.*, No.
 4 19-55300 (9th Cir.) (“*Pica Appeal*”). Also on July 16, 2020, the Ninth Circuit affirmed dismissal
 5 in the *Pica* Appeal, finding that the *Pica* plaintiffs’ causes of action were preempted by the
 6 Airline Deregulation Act of 1978, 49 U.S.C. §§ 1371, *et seq.* (“ADA”), and also upheld dismissal
 7 of *Pica* plaintiffs’ cause of action under the Stored Communications Act, 18 U.S.C. §§ 2701, *et
 8 seq.* (“SCA”).

9 Accordingly, counsel for the Parties met and conferred on August 19, 2020, and agreed
 10 that Mr. Dubrovszky’s claims against [24]7, which arise from his relationship with Delta Airlines,
 11 Inc. (“Delta”), are precluded and he should be dismissed from this lawsuit with prejudice. Also,
 12 the Parties agreed that Plaintiffs’ proposed nationwide class should not include any consumers
 13 whose involvement with this litigation arises from a relationship with Delta.

14 Therefore, the Parties agree that an amendment of the operative complaint is appropriate
 15 and would propose that Plaintiffs file their amended complaint on or before September 25, 2020.

16 **II. MOTIONS**

17 **A. Relevant Prior Motions**

- 18 1. Plaintiffs’ Motion to Transfer and Consolidate under 28 U.S.C. § 1407;
 19 2. [24]7’s Motion to Dismiss, Transfer, or Stay [ECF 77]

20 The Judicial Panel on Multidistrict Litigation (“JPML”) denied the Motion to Transfer and
 21 Consolidate under 28 U.S.C. § 1407, encouraging the parties litigating the Data Breach to
 22 voluntarily cooperate and coordinate among themselves for discovery and other aspects of the
 23 litigation. [ECF 60]. On December 14, 2018, [24]7 filed its Motion to Dismiss, Transfer, or Stay,
 24 which this Court granted on February 12, 2019. [ECF 89]. Plaintiffs appealed, and the Ninth
 25 Circuit remanded this matter for a stay pending resolution of the *Pica* Appeal.

1 **B. Anticipated Motions**

2 **1. [24]7**

3 **a. Motion to Dismiss**

4 [24]7 anticipates filing a Motion to Dismiss under Fed. R. Civ. P. 12(1) and (6), subject to
 5 its review of Plaintiffs' forthcoming amended complaint. With Plaintiffs' amended complaint
 6 due September 25, 2020, the Parties propose that [24]7's motion to dismiss would be due October
 7 23, 2020, Plaintiffs' response would be due November 20, 2020, and [24]7's reply would be due
 8 December 11, 2020.

9 **b. Potential Motion to Stay Discovery Pending Ruling on Motion
 10 to Dismiss**

11 As discussed in Section IV(B) below, the Parties are currently meeting and conferring on
 12 narrowing the scope of discovery pending a ruling on [24]7's Motion to Dismiss. To the extent an
 13 agreement cannot be reached, [24]7 anticipates filing a motion to stay discovery pending a ruling
 14 on its Motion to Dismiss.

15 **2. Plaintiffs**

16 **a. Motion for Class Certification**

17 Plaintiffs intend to file a Motion for Class Certification, pursuant to Fed. R. Civ. P.
 18 23(b)(2), (b)(3), and (c)(4), for the Nationwide Class or, in the alternative, the state subclasses.

19 **III. AMENDMENT OF PLEADINGS**

20 Any deadline for amendment of pleadings should be tolled until Plaintiffs are permitted to
 21 conduct discovery. Plaintiffs request a deadline of nine months following such commencement.

22 **IV. DISCOVERY**

23 **A. Discovery To Date**

24 The Parties have exchanged Rule 26(a) disclosures, but due to the procedural posture of
 25 this case, have not engaged in any formal discovery.

1 **B. Scope of Discovery and Proposed Limitations**

2 The Parties agree to limit formal discovery pending resolution of Defendant's forthcoming
 3 Motion to Dismiss. Defendant has agreed to provide the following documents and information,
 4 subject to the entry of an appropriate Protective Order:

- 5 1. non-email communications between [24]7 and Best Buy relating to the
 6 Data Incident, including:
 7 a. Executive summaries and/or overviews of the Data Incident and
 8 [24]7's investigation of the Data Incident;
 9 b. 2018 Security Document for CISO;
 10 c. Daily report(s); and
 11 d. Non-privileged Timelines;
 12 2. Attorneys General and other regulatory bodies demands for information
 13 related to the Data Incident that were sent to [24]7 and [24]7's responses to
 14 same, including communications with the Attorneys General from Indiana,
 15 Kansas, New York, Connecticut, Pennsylvania, Florida, and Delaware;
 16 3. CrowdStrike Summary Report;
 17 4. [24]7's PFI Report related to Best Buy;
 18 5. a custodian map describing the hierarchy of individuals involved in
 19 responding to the data security incident; and
 20 6. a data map identifying the locations of likely relevant documents.

21 Plaintiffs have also agreed to serve a Rule 30(b)(6) deposition notice to provide Defendant
 22 with the topics sought. The Parties have also agreed to negotiate search terms to identify a
 23 potentially relevant document production, but will refrain, pending a ruling on [24]7's Motion to
 24 Dismiss, from conducting depositions, propounding interrogatories, or requesting production of
 25 documents aside from those identified above, including screening for privilege or the creation of
 26 any categorical or individual privilege logs.

1 **C. Stipulated E-Discovery Order**

2 The Parties have discussed entering into a stipulated e-discovery order, but the Parties
 3 differ on whether doing so at this time is premature because Defendant believes that most
 4 discovery should be stayed pending resolution of its Motion to Dismiss.

5 **D. Proposed Discovery Plan**

- | | |
|--|---|
| 6 1. Deadline to Serve Initial Disclosures: | Already served |
| 7 2. Class Certification Motion Filing Deadline: | September 27, 2021 |
| 8 3. Class Certification Opposition Deadline: | October 25, 2021 |
| 9 4. Class Certification Reply Deadline: | November 22, 2021 |
| 10 5. Non-Expert Discovery Cut-Off: | To be set after ruling

on class certification motion and/or appeal |
| 11 6. Initial Expert Disclosures (with reports): | To be set after ruling on class

certification motion and/or appeal |
| 12 7. Rebuttal Expert Disclosures (with reports): | To be set after ruling

on class certification motion and/or appeal |
| 13 8. Expert Discovery Cut-Off: | To be set after ruling on class

certification motion and/or appeal |
| 14 9. Last Day to File Dispositive Motion: | To be set after ruling

on class certification motion and/or appeal |
| 15 10. Trial: | To be set after ruling

on class certification motion and/or appeal |

22 **V. CLASS ACTIONS**

23 The parties confirm that all counsel of record have reviewed the Procedural Guidance for
 24 Class Action Settlements. The parties propose the following briefing schedule and hearing for
 25 Plaintiffs' Motion for Class Certification:

1	A. <u>Deadline to File Motion:</u>	September 27, 2021
2	B. <u>Deadline to File Opposition:</u>	October 25, 2021
3	C. <u>Deadline to File Reply:</u>	November 22, 2021
4	D. <u>Hearing on Motion:</u>	On or before January 10, 2022

5 **VI. SETTLEMENT AND ADR**

6 The Parties have met and conferred, pursuant to ADR L.R. 3-5, about the possibilities for
 7 ADR in this action. The Parties believe that private mediation will be the most helpful to the
 8 Parties' settlement efforts. The Parties have discussed and are continuing to discuss potential
 9 mediators and dates of mediation. The Parties will update the Court once they have reached a
 10 decision on whether to mediate and, if they agree to mediate, when they plan do so.

11 DATED: September 3, 2020

BAKER & HOSTETLER LLP

By: /s/ Matthew D. Pearson

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17 DATED: September 3, 2020

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ATTESTATION

I, Ryan J. McGee, attest that all other signatures listed, and on whose behalf the filing is submitted, concur in the filing's contents and have authorized the filing.

/s/ Ryan J. McGee